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3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
5

6 FORTINET, INC.,  
7 Plaintiff,  
8 v.  
9 FORTANIX, INC.,  
10 Defendant.

Case No. 20-cv-06900-MMC

**ORDER DENYING DEFENDANT'S  
MOTION TO CONTINUE PRETRIAL  
CONFERENCE AND TRIAL DATES;  
VACATING HEARING**

11  
12 Before the Court is defendant Fortanix, Inc.'s "Motion to Continue Pretrial  
13 Conference and Trial Dates," filed May 2, 2022. Plaintiff Fortinet, Inc. has filed  
14 opposition, to which defendant has replied. Having read and considered the papers filed  
15 in support of and in opposition to the motion, the Court deems the matter suitable for  
16 decision on the parties' respective written submissions, VACATES the hearing scheduled  
17 for May 27, 2022, and rules as follows.

18 The above-titled action was filed October 2, 2020. At all times thereafter,  
19 defendant has been represented by Jayaram Law, Inc. ("Jayaram"). On January 8, 2021,  
20 the Court conducted a case management conference, at which time the parties jointly  
21 requested the Court set a trial in June 2022, and stated they expected the length of the  
22 trial would be five to seven days; the Court scheduled the trial date for June 20, 2022,  
23 and a pretrial conference for June 7, 2022. That same date, January 8, 2022, the Court  
24 filed a Pretrial Preparation Order setting those dates, as well as other dates and  
25 deadlines.

26 By the instant motion, defendant seeks an order continuing the pretrial conference  
27 and trial dates. The stated bases for the request are that (1) lead defense counsel is  
28 scheduled to conduct, in the Southern District of Florida, a trial in Cansortium Holdings,

1 LLC v. Forge Cannabinoids, LLC, 20-CV-24671 ("Florida Action"), said trial to begin June  
2 6, 2022, and expected to last five days,<sup>1</sup> and (2) lead defense counsel will be out of the  
3 country from July 14, 2022, to August 15, 2022. Specifically, defendant seeks a  
4 continuance of the trial and pretrial conference dates by ninety days.<sup>2</sup>

5 Under Rule 16, a scheduling order "may be modified only for good cause." See  
6 Fed. R. Civ. P. 16(b)(4). To show good cause, a party must show it acted with "diligence"  
7 in "seeking the amendment." See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
8 609 (9th Cir. 1992). "Although the existence or degree of prejudice to the party opposing  
9 the modification might supply additional reasons to deny a motion, the focus of the inquiry  
10 is upon the moving party's reasons for seeking modification." Id. "If that party was not  
11 diligent, the inquiry should end." Id.; see also Wong v. Regents of the Univ. of California,  
12 410 F.3d 1052, 1062 (9th Cir. 2005) (holding "[c]ourts set [trial] schedules to permit the  
13 court and the parties to deal with cases in a thorough and orderly manner, and they must  
14 be allowed to enforce them, unless there are good reasons not to").

15 Here, as plaintiff points out, the possible conflict between the trial date set by this  
16 Court and the current trial date in the Florida Action was created by Jayaram.  
17 Specifically, the Florida Action initially was set for trial on October 25, 2021, and  
18 subsequently continued twice by order of the Florida court, first to February 7, 2022, and  
19 then to March 7, 2022. (See Florida Action, Docs. 14, 90, 116.)<sup>3</sup> Thereafter, on January  
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21 <sup>1</sup> According to defendant, it is the practice of the Southern District of Florida that  
22 "civil cases are set on a two-week trial calendar, and the parties must be prepared to go  
23 to trial at any point during the two weeks," which practice defendant understands to mean  
that a trial scheduled to begin June 6, 2022, could start as late as June 17, 2022. (See  
Def.'s Mot. at 1:22-25.)

24 <sup>2</sup> In its reply, defendant alternatively requests the trial be continued to July 5, 2022.  
25 The Court, however, is unavailable to begin on July 5, 2022, what the parties anticipate  
26 could be up to a seven-day trial. Moreover, as the Court does not conduct jury trials on  
Fridays, a seven-day trial beginning July 5, 2022, would conclude on July 14, 2022, a  
date on which lead defense counsel states he will be out of the country.

27 <sup>3</sup> The Court takes judicial notice of the docket in the Florida Action, both parties  
28 having cited to entries therein. See Mahoney v. Sessions, 871 F.3d 873, 876 n.2 (9th  
Cir. 2001) (taking judicial notice of district court docket sheet)

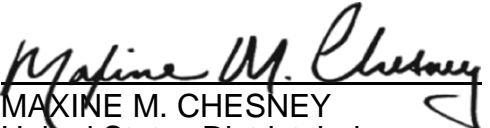
26, 2022, Jayaram filed in the Florida Action a motion to continue the then-existing March 7 trial date, on the ground defense counsel had a conflict beginning March 9, 2022, and stating Jayaram, as well as other counsel in the Florida Action, were "fully available for trial in [that] matter during the weeks of June 6 and June 13, 2022" (see Florida Action Doc 119); the Florida court, by order filed February 15, 2022, granted Jayaram's motion and continued the trial in the Florida Action to June 6, 2022 (see Florida Action Doc. 120). Knowing of the possible conflict created thereby, Jayaram nonetheless waited approximately two and a half months to advise plaintiff herein and the Court of such potential conflict, explaining it had hoped the instant case would settle.

Having reviewed the record, the Court finds Jayaram has failed to show good cause for a continuance of the pretrial conference and trial dates. As noted, the potential conflict posed by the most recent continuance in the Florida Action was created by Jayaram itself, namely, notwithstanding its knowledge of the pretrial conference and trial dates in the instant case, both having been set more than a year earlier, Jayaram represented to the Florida court that it was available to conduct a trial in Florida during the weeks of June 6<sup>4</sup> and June 13. Moreover, there is no showing that, if called upon, another attorney at Jayaram would not be available to represent defendant in the instant action.

Accordingly, the motion to continue is hereby DENIED.

**IT IS SO ORDERED.**

Dated: May 13, 2022

  
MAXINE M. CHESNEY  
United States District Judge

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<sup>4</sup> As the Court can conduct the pretrial conference by Zoom, lead defense counsel need not leave Florida to appear in San Francisco on June 7, 2022.